

3. Switched Access

In the MFS/PB contract, the parties agreed to rates to terminate toll traffic that differ from the switched access rates adopted in D.94-09-065 and D.95-12-020, according to the Coalition. The Coalition argues that D.95-12-020 prevents Pacific from contracting for local transport portion of switched access and D.94-09-065 prevents Pacific from contracting for switched access at other than tariffed rates. Pacific responds that toll termination is not switched access and even if the Commission treated toll termination as switched access, the rate in the contract is equal to an average toll termination rate.

We agree with the Coalition that Pacific should not include toll termination rates in the MFS/PB contract. Pacific may reference that toll termination will be provided at tariffed rates through the switched access tariff. We do not accept Pacific's argument that toll termination is different from switched access. If Pacific desires to offer toll termination as a non-tariffed network element, it must demonstrate that toll termination rates are equal or greater than its costs. This data was not submitted by Pacific.

4. Interim Number Portability

As with unbundled loops, we believe that interim number portability is an essential element that competitors will need. We will require Pacific to modify the interim number portability price, as provided by remote call forwarding, contained in the agreement to be no lower than the TSLRIC based cost floors adopted in our OANAD proceeding when the issue is resolved.

D. Call Termination Rates

In its protest, the Coalition argues that the inclusion of call termination rates overrides the Commission's adopted policy of bill and keep. Pacific and MFS respond that D.95-07-054, page 39 allows for parties to "agree to a compensation agreement other than bill and keep" and to seek approval via an advice letter.

We wish to clarify that it was our intent in D.95-07-054 that the rules on interconnection adopted in that decision, including the bill and keep policy on call termination, do not apply where parties to a proposed contract mutually agree to the contract terms. (See D.95-07-054, pages 37-39.) Thus, we agree with Pacific and MFS that a contract may contain compensation arrangements other than bill and keep. After the Commission reviews the appropriateness of the bill and keep policy and if the Commission determines a call termination rate, the termination rate in this agreement will be subject to modification.

E. Precedential Nature of MFS/PB Contract

In its protest, the Coalition recommends that the Commission not use the MFS/PB contract as a public policy template. In its responses, both Pacific and MFS agree in part with the Coalition that the contract does not have to serve as a template for resolution of issues pending before the Commission in the Local Competition and OANAD proceeding. We agree with the parties that this agreement should not serve as a public policy template, and remind both the protestants and parties to the contract that we clarified in D.95-12-056 that interconnection contracts would not be accorded precedential nature in the review process (P.41). Further, the Commission is permitting parties to enter this agreement based on parties desire to enter the agreement and upon their assertions about the details.

FINDINGS

1. Pacific filed Advice Letter No. 17879 requesting Commission approval of a co-carrier interconnection agreement between itself and MFS Intelenet of California, Inc.
2. The Advice Letter and contract as modified in this Resolution conform to the requirements of Decision 95-07-054, D.95-12-056 and G.O. 96-A.
3. The protests of the Coalition and DRA to the overly broad and potentially anti-competitive nature of the contract have some merit.
4. The MFS/PB contract is beyond the scope of an interconnection agreement as defined in D.95-07-054 and D.95-12-056.
5. Pacific Bell Advice Letter 17879 and the agreement included therein will be treated as a contract filed in accordance with G.O. 96-A.
6. The PB/MFS contract should be modified to comport with the discussion section of this Resolution.
 - o Pacific should include the G.O. 96-A, Section X requirement that the contract is subject to modification by the Commission.
 - o Rates in the contract are subject to adjustment to conform to rates established by the Commission in future decisions.

- o Pacific should book NXX code opening costs into a memorandum account associated with opening codes for MFS under the PB/MFS contract. When the Commission establishes costs for NXX code openings and a recovery mechanism, Pacific should apply the costs and recovery mechanism to the memorandum account.
 - o Pacific should limit MFS to one code opening per NXX rating area until MFS can demonstrate in an advice letter that its utilization warrants additional NXX codes.
 - o Pacific should modify, if necessary, the loop rates in the contract such that the rates are no lower than TSLRIC based cost floors developed in the OANAD proceeding.
 - o Pacific should modify, if necessary, the interim number portability rates in the contract such that the rates are no lower than TSLRIC based cost floors developed in the OANAD proceeding.
 - o Pacific should remove the toll termination rates contained in the contract. Pacific may only offer toll termination through its switched access tariff to be consistent with D.95-12-020.
7. The call termination rates contained in the MFS/PB contract are in accordance with D.95-07-054.
8. After the Commission reviews the appropriateness of the bill and keep policy and if the Commission determines a call termination rate, the termination rate in this agreement will be subject to modification.
9. The MFS/PB contract should not be accorded any precedential value in either the approval of other interconnection contracts or in resolving issues pending in the Local Competition and OANAD proceedings.
10. This resolution authorizes Pacific Bell to enter into the contract as modified. Mere authorization of this contract does not compel Pacific bell to enter into this specific arrangement.

THEREFORE, IT IS ORDERED that:

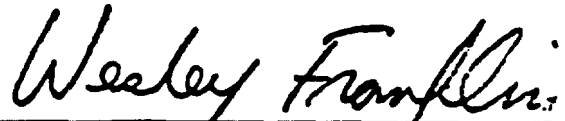
1. Authority is granted to make Pacific Bell Advice Letter No. 17879 and the associated contract as modified by this Resolution effective.
2. Pacific may supplement Advice Letter No. 17879 to incorporate the changes detailed in the "Discussion" and "Findings" of this Resolution within 10 days.

January 17, 1996

3. Pacific Bell Advice Letter No. 17879 and the associated contract shall become effective 5 days following Pacific Bell's submittal of a supplement that incorporates the changes ordered in this Resolution.

The effective date of this Resolution is today

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 17, 1996. The following Commissioners approved it:



WESLEY M. FRANKLIN
Executive Director

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, Jr.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners